

REMARKS

**A.** In the Office Action dated December 28, 2006, the Examiner required Applicant to elect one of the following inventions:

I. Claims 1-39, 42, 43, 46, 47, 50, 51, 54 and 55 drawn to an apparatus for application to a subject body.

II. Claims 40, 41, 44, 45, 48, 49, 52, 53, 56, and 57 drawn to a non-transdermal apparatus for application to skin.

Applicant hereby elects Invention I: claims 1-39, 42, 43, 46, 47, 50, 51, 54 and 55. This election is made without traverse.

**B.** In addition to the restriction requirement, the Examiner required Applicant to elect one of the following species, whether Applicant elects invention I or II:

- (a) Left-handed molecules; and
- (b) Right-handed molecules.

These species correspond to claims 1-57, of the genus of Invention I: claims 1 and 2; Invention II: claims 40 and 41. Since, Applicant previously elected Invention I, (*see* Section A, above), Applicant hereby elects the species related to left-handed molecules, i.e., claims 1, 3, 5, 6, 10, 11, 14, 16, 18, 20, 22, 24, 26, 28, 20, 32, 34, 36, 38, 42, 46, 50, and 54. This election is made without traverse.

**C.** Further, the Examiner required Applicant to elect one of the following sub-species, if Applicant elects invention I:

- (a) bracelet;
- (b) necklace;
- (c) watch; and
- (d) pendant.

These sub-species correspond to claims 26-33 of the species related to left- and right-handed molecules of the genus of Invention I: claims 1 and 2. Since Applicant previously elected Invention I and the species related to left-handed molecules (*see Sections A and B, above*), Applicant hereby further elects the sub-species related to a bracelet, i.e., claim 26. This election is made without traverse.

**D.** The Examiner required Applicant to elect one of the following right-handed molecules sub-species, if Applicant elects invention I:

- (a) amino acid, and
- (b) sugar.

Since Applicant elected Invention I and the species related to left-handed molecules (*see Sections A and B, above*), this sub-species requirement is now moot.

**E.** Additionally, the Examiner required Applicant to elect one of the following biological effects sub-species, whether Applicant elects invention I or II:

- (a) improvement of stamina;
- (b) improvement of subject's strength endurance;
- (c) improvement of physical strength for the subject; and
- (d) relief of pain.

These sub-species correspond to claims 42-57 of the species of left- and right-handed molecules of the genus of Invention I: claims 1 and 2; Invention II: claims 40 and 41. Since Applicant previously elected the invention of Invention I and the species related to left-handed molecules, (*see Sections A and B, above*), Applicant hereby further elects the sub-species related to the biological effect of improvement of stamina, i.e., claim 42. This election is made without traverse.

**F.** The Examiner also required Applicant to elect one of the following amino acids sub-species:

alanine, arginine, asparagine, aspartic acid, carnitine, acetyl carnitine, carnitine tartrate, carnitine magnesium citrate, citrulline, cysteine, cystine, gaba, glutamic acid, glutamine, glutathione peroxidase, glycine, histidine, hydroxyglutamic acid, hydroxyproline, isoleucine, leucine, norleucine, lysine, methionine, ornithine, valine, phenylalanine, proline, serine, taurine, threonine, tryptophan, or tyrosine.

These sub-species correspond to claims 6, 8, 10, and 11 of the species related to left- and right-handed molecules of the genus of Invention I: claims 1 and 2. Since, Applicant previously elected Invention I and the species related to left-handed molecules (*see Sections A and B, above*), Applicant hereby further elects the sub-species related to the amino acid: L-Carnitine, i.e., claims 6, 10 and 11. This election is made with traverse, since it appears the Examiner is in fact asserting that the claims contain improper Markush groupings.

Applicant submits that the above species are all directed to the same art-recognized class, i.e., amino acids. Further, the claims are Markush-type claims; for example claim 6 recites “wherein said amino acid is selected from a group consisting of ...” *See MPEP § 803.02.*

“If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require provisional election of a single species.” *Id.*

Accordingly, Applicant believes the claims contains proper Markush grouping and requests the withdrawal of this sub-species requirement and search and examination of all species.

G. The Examiner also required Applicant to elect one of the following forms of sugars sub-species:

dextrin, dextrose, fructose, galactose, glucose, glycogen, inositol, invert sugar, lactose, levulose, maltose, molasses, sucrose, xylose, high fructose corn syrup, honey or sugar cane.

These sub-species correspond to claims 9, 12 and 13 of the species of right-handed molecules of the genus of Invention I: claims 1 and 2. Since, Applicant previously elected Invention I and the species related to left-handed molecules (*see Sections A and B, above*), this sub-species requirement is now moot.

However, it appears that the Examiner is in fact asserting that the claims contain improper Markush groupings and indeed, Applicant submits that a species-requirement for a Markush claim is improper, as discussed above in Section F.

### **Conclusion**

The following is a summary of Applicant's elections and the corresponding claims:

#### **Invention:**

Invention I: 1-39, 42, 43, 46, 47, 50, 51, 54 and 55

#### **Species:**

Left-Handed Molecules: 1, 3, 5, 6, 10, 11, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 42, 46, 50, and 54

#### **Sub-Species:**

Bracelet: 26 of sub-species group of claims 26-33

Amino Acid for

Right-Handed Molecule: N/A (since Left Handed molecules elected)

Biological Effect:

Improvement of Stamina: 42 of sub-species group of claims 42-57

Amino Acid:

L-Carnitine 6, 10 and 11 of sub-species group of claims 6, 8, 10 and 11

Sugar: N/A (since Left-Handed molecules elected)

Thus, Applicant submits that the following claims are to be examined:

1, 3, 5, 6, 10, 11, 14, 16, 18, 20, 22, 24, 26, 34, 36, 38, and 42

Applicant reserves the right to seek rejoinder of the non-elected claims and/or file a divisional application drawn to the non-elected subject matter.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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